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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,268	09/25/2001	Dhaval N. Shah	CISCP064C1	9948

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BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS, TX 75201-2980

EXAMINER

LEROUX, ETIENNE PIERRE

ART UNIT	PAPER NUMBER
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2161

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,268

Applicant(s)

SHAH ET AL.

Examiner

Etienne P LeRoux

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 38-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 38-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Status:

Claims 38-50 are pending; claims 1-37 having been cancelled. Claims 38-50 are rejected as detailed below.

Specification

The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01. There are numerous instances of “cisco.com” included in the specification.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Paragraph 67 of the specification states:

It is then determined whether the DRP agents need to be contacted for metric information (step 711). If the DRP agents do not need to be contacted for metric information in step 711, then a best service is determined based on the predetermined selection criteria (step 713). Examples of configuration selection criteria that do not need to contact the DRP agents are portion, random, or administrative costs, since the distributed director itself may follow these criteria.

Claim 38 states “selecting a service based on predetermined selection criteria if no metric information is required.” The specification as noted above, does not clearly describe the process of determining when the DRP agents need to be contacted and when the DRP agents do not need to be contacted such that the above claim limitation is supported regarding “selecting a service.”

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The attempt to incorporate subject matter into this application, i.e., CISPCP048 of Beyer and Weaver is ineffective because the US Patent Application Serial Number and the filing date are omitted.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 38-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "if metric information is required" in claim 1 is a relative term which renders the claim indefinite. The term "if metric information is required" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For purposes of this Office Action, above limitation will be ignored.

The term "if no metric information is required" in claim 1 is a relative term which renders the claim indefinite. The term "if no metric information is required" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For purposes of this Office Action, above limitation will be ignored.

Claims 2-50 are rejected for reasons similar to the above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,115,752 issued to Chauhan (hereafter Chauhan) and further in view of US Pat No 6,43,835 issued to Tanigawa et al (hereafter Tanigawa), as best examiner is able to ascertain.

Claims 38, 44 and 50:

Chauhan discloses:

selecting a mirrored service [Fig 4]

requesting metric information [best route, col 7, lines 5-50]

Chauhan discloses the essential elements of the claimed invention as noted above but does not disclose selecting a service based on predetermined selection criteria. Tanigawa

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discloses selecting a service based on predetermined selection criteria [Fig 13, col 10-35]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chauhan to include selecting a service based on predetermined selection criteria as taught by Tanigawa for the purpose of routing a message via the cheapest route which includes the Internet [col 1, lines 35-60].

Claims 43 and 49:

Chauhan discloses round trip time [Abstract].

Claims 39 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Chauhan and Tanigawa and further in view of US Pat No 6,055,561 issued to Feldman et al (hereafter Feldman), as best examiner is able to ascertain.

Claim 39:

The combination of Chauhan and Tanigawa discloses the elements of claim 38 as noted above but does not disclose wherein the metric information comprises a predetermined border gateway protocol attribute. Feldman discloses wherein the metric information comprises a predetermined border gateway protocol attribute [col 1, lines 30-45]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above combination of references to include wherein the metric information comprises a predetermined border gateway protocol attribute as taught by Feldman for the purpose of determining how packets ought to be routed by employing standards that have been extensively deployed [col 1, lines 40-45].

Claim 45:

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The combination of Chauhan and Tanigawa discloses the elements of claim 44 as noted above but does not disclose wherein the metric information comprises a predetermined border gateway protocol attribute. Feldman discloses wherein the metric information comprises a predetermined border gateway protocol attribute [col 1, lines 30-45]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above combination of references to include wherein the metric information comprises a predetermined border gateway protocol attribute as taught by Feldman for the purpose of determining how packets ought to be routed by employing standards that have been extensively deployed [col 1, lines 40-45].

Claims 40 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Chauhan and Tanigawa and further in view of Pub No US 2004/0042596 issued to Kim et al (hereafter Kim), as best examiner is able to ascertain.

Claim 40:

The combination of Chauhan and Tanigawa discloses the elements of claim 38 as noted above but does not disclose community attributes. Kim discloses community attributes [paragraph 21]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above combination of references to include community attributes as taught by Kim for the purpose of registering destination network parameters by identifying route destinations [paragraph 21].

Claim 46:

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The combination of Chauhan and Tanigawa discloses the elements of claim 44 as noted above but does not disclose community attributes. Kim discloses community attributes [paragraph 21]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above combination of references to include community attributes as taught by Kim for the purpose of registering destination network parameters by identifying route destinations [paragraph 21].

Claims 41 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Chauhan and Tanigawa and further in view of US Pat No 6,215,772 issued to Verma, as best examiner is able to ascertain.

Claim 41:

The combination of Chauhan and Tanigawa discloses the elements of claim 38 as noted above but does not disclose wherein the metric information comprises a border gateway protocol multi-exit discriminator value. Verma discloses wherein the metric information comprises a border gateway protocol multi-exit discriminator value [Fig 9]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above combination of references to include wherein the metric information comprises a border gateway protocol multi-exit discriminator value as taught by Verma for the purpose of estimating the characteristics of a dynamic link [Fig 9].

Claim 47:

The combination of Chauhan and Tanigawa discloses the elements of claim 44 as noted above but does not disclose wherein the metric information comprises a border gateway protocol

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multi-exit discriminator value. Verma discloses wherein the metric information comprises a border gateway protocol multi-exit discriminator value [Fig 9]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above combination of references to include wherein the metric information comprises a border gateway protocol multi-exit discriminator value as taught by Verma for the purpose of estimating the characteristics of a dynamic link [Fig 9].

Claims 42 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Chauhan and Tanigawa and further in view of US Pat No 6,457,039 issued to Fogelholm et al (hereafter Fogelholm), as best examiner is able to ascertain.

Claim 42:

The combination of Chauhan and Tanigawa discloses the elements of claim 38 as noted above but does not disclose wherein the metric information comprises a border gateway protocol local preference. Fogelholm discloses wherein the metric information comprises a border gateway protocol local preference [Fig 2]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above combination of references to include wherein the metric information comprises a border gateway protocol local preference as taught by Fogelholm for the purpose of specifically designating the physical location of the client by means of a country prefix [Fig 2].

Claim 48:

The combination of Chauhan and Tanigawa discloses the elements of claim 44 as noted above but does not disclose wherein the metric information comprises a border gateway protocol

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local preference. Fogelholm discloses wherein the metric information comprises a border gateway protocol local preference [Fig 2]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above combination of references to include wherein the metric information comprises a border gateway protocol local preference as taught by Fogelholm for the purpose of specifically designating the physical location of the client by means of a country prefix [Fig 2].

Conclusion

Applicant's submission of the requirements for the joint research agreement prior art exclusion under 35 U.S.C. 103(c) on 7/8/2005 prompted the new ground(s) of rejection under 37 CFR 1.109(b) presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.02(l)(3). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne P. LeRoux whose telephone number is (571) 272-4022.


The examiner can normally be reached Monday – Friday, 8:00 am -4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272-4023. The fax phone number for the organization where this application or proceeding is assigned is 571 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Etienne LeRoux

8/10/2005


MOHAMMAD ALI
PRIMARY EXAMINER